IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ORIGINATING SUMMONS NO.997 OF 2005
IN
SUIT NO.1926 OF 2005

P. Sanyal & Ors. ....Plaintiffs
V/s.
Bank of India ....Defendant

Mr.A.Y. Bookwala, Senior Counsel with Ms.Divakar i/b Little & Co. for the Plaintiffs.

CORAM : S.J. VAZIFDAR, J.
DATED : 17TH JANUARY, 2006.

P.C. :

1. This is an originating summons taken out by the trustees of the Bank of India Mutual Fund (hereinafter refer to as "BOIMF"). Plaintiff No.2 is one V. Rajaraman is one of the trustees. Plaintiff No.3, Bank of India, is the principal trustee. Defendant No.1 is the Bank of India. The questions to which answers are sought in this originating summons are as under :-

(i) whether the following words found in Clause 30 of the Trust Deed : ".....and upon the termination of the Trust all the residue of the Trust Fund with

its accretions shall vest in the Settlor absolutely." give a right to the defendant to continue to prosecute/defend the pending legal actions both in the civil and criminal courts including those under section 138 of the Negotiable Instruments Act initiated by and against the Trustees of BOIMF.

(ii) whether the term "accretions" as used in Clause 30 of the Trust Deed can be construed to mean and include the right to pursue and prosecute/defend pending legal actions filed by and against BOIMF.

(iii) whether in order to ensure that all the residue of the trust fund with its accretions shall vest in the defendant absolutely, the defendant is empowered to institute appropriate legal proceedings, both civil and criminal, to enforce and protect the rights which have accrued in favour of BOIMF and which shall vest in the defendant absolutely on the extinction/termination of the trust.

(iv) As a corollary to question (iii) above, whether the defendant would be empowered to

defend legal proceedings, both civil and criminal, which may henceforth be taken against BOIMF."

2. It is necessary to state the facts leading to this originating summons. BOIMF was formed by a trust deed dated 9th June, 1990 (Exhibit "A" to the suit) clause 30 whereof reads as under :-

> "30. The Trust constituted under these presents shall stand dissolved -
>
> a) On the expiry of all the Mutual Benefit Schemes that may be framed thereunder and ;
>
> b) the Settlor deciding to discontinue the Mutual Fund business ; or
>
> c) on the number of Trustees falling below the minimum number prescribed under these presents and the Settlor failing to appoint new Trustee or Trustees within a period of three months.
>
> and upon the termination of the Trust all the residue of the Trust Fund with its accretions shall vest in the Settlor absolutely."

3. By clause 14 of the first deed of variation dated 31.1.1994 (Exhibit "B" to the suit), the trustees were to appoint an assets management company. The said deed also made other provisions in respect of the assets management company. Pursuant thereto, the

BOI assets management company was appointed as the assets management company.

4. The second deed of variation dated 4.1.2003 (Exhibit "C" to the suit) was executed. Clause 34 thereof reads as under :-

> "34. "Notwithstanding anything contained to the contrary in the said Deed of Trust and in the said Deed of Variation :
>
> a) all the suit filed cases/complaints/other litigations initiated/to be initiated by the BOI Mutual Fund / BOIAMC shall in the event of the termination/winding up of the BOI Mutual Fund Trust be continued by Bank of India and for this purpose the Trustees/s shall have the power to execute any document or other authority letters, if required.
>
> b) Bank of India shall also be entitled to all the rights / claims which BOIMF/BOIAMC may have on the date of termination/winding up of the BOI Mutual Fund Trust and which may arise in future and may also initiate appropriate proceedings for realisation of

> monies / assets. Bank of India may also at its sole discretion defend any of the suits/cases/complaints filed against BOIMF/BOI AMC in the event of termination/winding of the BOI Mutual Fund." (emphasis supplied)

5. On 27.2.2003 BOI Assets Management Company stood amalgamated with and transferred to the Defendant. Pursuant thereto by a Memorandum of Undertaking dated 13.12.2004 (Exhibit "H" to the suit) entered into between the trustees and the Defendant all the assets of BOIMF stood transferred to the Defendant. Clauses 1, 3 and 11 thereof read as under :-

> 1. Subject to the terms and conditions of this Agreement and in consideration of the mutual covenants contained herein BOIMF agrees to hand over and BOI agrees to take over and assume the full responsibility, including the management and the administration of the Schemes,all the assets and liabilities of the Schemes for the benefit and in the best interests of the uniholders of the Schemes.

> 3. On and from the date of handing over, BOI shall assume all the obligations and responsibilities in respect of the Schemes, in accordance with, and pursuant to, the MF Regulations and directions of SEBI.
>
> 11. BOI will take necessary steps to implead itself in the pending legal actions in relation to the Schemes and BOIMF and will initiate such legal actions to enforce the rights of and or defend claims by and against the Trust and/or the Trustees.

6. In fact BOI Assets Management Company has now ceased to exist as a separate legal entity. In view of the aforesaid facts, it is clear that it is now the Defendant that is entitled to and must continue to prosecute/defend pending litigations both civil and criminal.

7. In the circumstances, the following order is passed :-

a). Questions (i), (iii) and (iv) reproduced above are answered in the affirmative.

b). As far as question (ii) is concerned, the term "accretions" in Clause 30 of the Trust Deed does not mean the right to pursue and prosecute/defend pending legal actions by and against BOIMF. The Defendant is entitled to pursue and prosecute/defend the legal actions filed by and against BOIMF in respect of the "accretions" referred to in Clause 30.

8. The Suit is accordingly disposed of.

9. Drawn up decree is expedited. The same shall be done within four weeks of the Plaintiff’s advocate forwarding a draft decree for approval.